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MM DOCKET No. 99-329

RM-9701

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COMMENTS OF

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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

IN THE MATTER OF:)	MM DOCKET NO. 99-329
)	
<i>Amendment of 47 C.F.R. §73.202(b)</i>)	RM-9701
<i>Table of Allotments</i>)	
<i>FM Broadcast Stations</i>)	
<i>(Avalon, Fountain Valley, Adelanto</i>)	
<i>Ridgecrest and Riverside, California)</i>)	
)	
To: The Chief, Allocations Branch)	
Policy and Rules Division)	
Mass Media Bureau)	

**COMMENTS OF
ADELMAN COMMUNICATIONS, INC.**

Comes now **Adelman Communications Inc., Inc.** ("Adelman"), by Counsel, and pursuant to Section 1.415 of the Commission's Rules, hereby respectfully submits the following Comments in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned Rule Making proceeding. In connection therewith, Adelman states the following.

Introduction

1. On November 19, 1999 the Commission released a Notice of Proposed Rule Making¹ in the above-captioned proceeding, proposing to relocate or downgrade a number of FM allotments as follows:

¹ DA 99-2562, released November 19, 1999. The *NPRM* was issued in response to a "Petition for Rule Making" filed by Amaturio Radio Group of L.A., Ltd. ("Amaturio" or "petitioner").

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Adelanto, California	—	224A
Avalon, California	224A	---
Fountain Valley, California	---	224A
Ridgecrest, California	224B1, 285B1	224A, 285B1
Riverside, California	224A, 248B, 256B	248B, 256B

2. Amaturro, the petitioner, is the licensee of the Avalon and Riverside stations, the allotments for which are sought to be moved, and stated that it had an agreement to purchase Station KZIQ-FM, Ridgecrest, California, and the consent of the existing licensee to downgrade 224B1 in Ridgecrest to a Class A facility.

Statement of Interest

3. Adelman is the Licensee of KLOA (AM) and KLOA-FM, Ridgecrest, and KEDD (FM), Johannesburg, California.² Adelman's stations compete with one or more of the Petitioner's stations, either presently, or as proposed. Moreover, Adelman has petitioned the Commission to institute rule making proceedings to move the allotment for KEDD (FM), Johannesburg, California (Channel 280B1) to Edwards, California and downgrade the channel to 280A.³ Amaturro resubmitted its petition for rule making as a conditional "counterproposal" in the Johannesburg and Edwards, California proceeding (MM Docket 99-239), suggesting that if the Commission believed that only one downgrade in channels in the Ridgecrest-Johannesburg area could be approved, the Amaturro proposal should be preferred. Accordingly, Adelman has standing as an interested party to submit these comments.

² Adelman principal Robert Adelman is the proposed Assignee of KRAJ (FM), Johannesburg, California. See, BALH-19991007ABG (granted 12/28/99).

³ The Edwards, California Rule Making proceeding is awaiting action by the Commission. See, MM Docket 99-239, RM-9658.

Discussion

4. Adelman has no objection to the proposals set forth in the instant proceeding so long as the reallocation in no way prevents favorable action on the proposed relocation of KEDD from Johannesburg to Edwards, California. The proposals set forth in this proceeding are in no way mutually exclusive with the proposed reallocation of Channel 280B1 in Johannesburg to 280A in Edwards in MM Docket 99-239.⁴

5. Moreover, since the filing of Amaturio's petition and subsequent counter-proposal, a one-step application has been filed that proposes to upgrade Station KRAJ (FM), Johannesburg, California, from Channel 265A to Channel 265B1. Thus, any loss of service occurring as a result of a downgrade and relocation by KEDD from Johannesburg to Edwards, California would be offset by the proposed upgrade of KRAJ to a B1 facility.⁵

6. However, should the Commission find that only one downgrade proposal can be accepted, it is clear that the Johannesburg/Edwards proposal in MM Docket 99-239 is to be preferred over the proposed downgrade of channel 224B1 in Ridgecrest, California in the instant proceeding. As noted in Adelman's Reply Comments in MM Docket 99-239, the proposal will bring first local transmission service to a community of 7,423 persons, while Johannesburg, a community of only 309 persons, will continue to be served by another full time FM station that has applied for a B1 upgrade.

⁴ Accordingly, Amaturio's "counterproposal" in MM Docket 99-239 should be dismissed as procedurally invalid. *See, DeRidder, Louisiana*, DA 99-1426, 1999 FCC Lexis 3467 (MMB 1999) ("Counterproposal" not mutually exclusive with proposal set forth in subject NPRM is entitled to no consideration in that proceeding); *McFarland and Coalinga, California*, 13 FCC Rcd 13135, n.2 (MMB 1998); *Potts Camp and Saltillo, Mississippi*, 13 FCC Rcd 11909, n.1 (MMB 1998).

⁵ *See* BPH-990917AM.

Moreover, it was established in MM Docket 99-239 that the Edwards proposal will provide new service to **4,601** underserved persons.⁶ The Johannesburg/ Edwards proposal in MM Docket 99-239 is thus worthy of approval irrespective of whatever action is taken by the Commission in the instant proceeding. But it should be noted that grant of both the Amaturio and KEDD proposals will not result in the creation of any white or gray area. And, given the proposed upgrade of KRAJ (FM), Johannesburg, California, approval of the KEDD proposal will not result in the creation of *any* underserved areas.

Conclusion

7. Adelman takes no position on the overall merits of Amaturio's reshuffling of allotments. Adelman simply wishes to point out to the Commission that favorable action in this proceeding should not prejudice favorable consideration of the Johannesburg/Edwards proposal in MM Docket 99-239. Both proposals can be accepted and the public interest would be better served thereby.

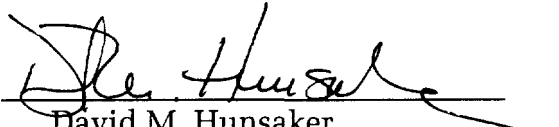
⁶ When the new service is analyzed, the 4,601 is broken down as follows:

- 142 persons who presently now receive only two aural reception services will subsequently receive three such services;
- 2,910 persons who presently now receive only three aural reception services will subsequently receive four such services, including the entire community of Boron, California; and
- 1,549 persons who presently now receive only four aural reception services will subsequently receive five such services, including the entire community of North Edwards, California, and thus become well served.

WHEREFOR, the above premises considered, Adelman respectfully urges that the above Comments be ACCEPTED, and that the Commission take such action as is consistent with the relief requested herein.

Respectfully submitted,

ADELMAN COMMUNICATIONS, INC.

By: 
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January 10, 2000

CERTIFICATE OF SERVICE

I, Sharon L. Hinderer, Secretary in the Law Firm of **Putbrese Hunsaker & Trent, P.C.**, hereby certify that I have on this 10th day of January, 2000, sent, by United States Mail, postage prepaid, a true copy of the foregoing "**Comments of Adelman Communications, Inc.**" upon the following:

*John A. Karousos, Chief
Allocations Branch, Policy & Rules Division
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*Via Hand Delivery

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